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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/582,417	05/23/2007	Matts Andersson	NOBELB.240NP	4883
20995 7590 07/01/2009 KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET FOURTEENTH FLOOR IRVINE, CA 92614				
EXAMINER NELSON, MATTHEW M				
ART UNIT 3732		PAPER NUMBER		
NOTIFICATION DATE 07/01/2009		DELIVERY MODE ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

jcartee@kmob.com  
eOAPilot@kmob.com

### Office Action Summary

**Application No.**

10/582,417

**Applicant(s)**

ANDERSSON ET AL.

**Examiner**

Matthew M. Nelson

**Art Unit**

3732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 March 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 18-36 is/are pending in the application.
- 4a) Of the above claim(s) 26-36 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 18-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/ISD)
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date 3/24/2009

### **DETAILED ACTION**

1. Amendment filed 3/24/2009 is acknowledged. Claims 1-17 have been cancelled and new claims 18-36 have been added.

### ***Election/Restrictions***

2. Newly submitted claims 26-36 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: Claims 26-36 are directed to a method of constructing components related to a prosthetic installation, however no method claims were in the originally presented invention.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 26-36 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:  

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
4. Claims 18-23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. Claim 18 recites the limitation "inner surfaces" in line 15. There is insufficient antecedent basis for this limitation in the claim. Claims 19-23 are rejected for depending on claim 18.
6. Claim 21 recites the limitation "the template" in line 2. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 18-21, 23 are rejected under 35 U.S.C. 102(b) as being anticipated by Poirier (US 2002/0102517).
9. Poirier shows a system comprising a computing system ([0012]) configured to receive data corresponding to a graphical representation of a dental structure of a patient ([0012]), the dental structure comprising at least a portion of the patient's jawbone (imaging a jawbone, [0012]), the computing system further configured to receive data corresponding to one or more desired fixture locations in the patient's jawbone (at least one implant drill hole position, [0012]), the desired fixture locations determined using, at least in part, the graphical representation of the dental structure of the patient ([0012]); a dental template (drill template body, [0012]) configured to be applied to the patient, the dental template including one or more through-bores (drill

guide socket, [0012]) configured to guide a drilling tool for drilling one or more holes in the patient's jawbone corresponding to the desired fixture locations, wherein positions of the one or more through-bores are based upon the desired fixture locations determined by the computing system ([0012]); and a working model (physical model, [0017]) of the dental structure of the patient, the working model formed within the dental template and having surfaces corresponding to inner surfaces of the dental template (drill template body molded on physical model, so would have corresponding surfaces, [0017]). With respect to claims 19-21, further comprising a prosthetic installation (upper denture structure 43) configured to attach to the jawbone of the patient via one or more fixtures (implant 49) configured to be inserted in the one or more holes drilled in the patient's jawbone, and the working model is an impression of the dental template (working model and dental template are asymmetrical to one another, [0017]). With respect to claim 23, the data usable in the construction of the template comprises a CAD file (the file is for computer-aided design, [0012]). Regarding "constructed at least in part using the working model", "installed using the dental template and the one or more fixtures", "working model is an impression of the template", and "the template is constructed using a stereolithography machine", the patentability of a product does not depend on its method of production. *In re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985). In regards to the use of the term "for", please see *In re Rohrbacher*, 128 USPQ 117 (CCPA 1960).

10. Claims 24-25 are rejected under 35 U.S.C. 102(b) as being anticipated by Kennedy (US 5,718,579).
11. Kennedy shows a dental assembly comprising a template (splint 10) including a channel (at 20 in Fig. 2) configured to follow a contour of and abut against a patient's dental structure, the template comprising an opening (hole 26) extending through the template; and a sleeve (12) configured to extend at least partially through the opening, the sleeve configured to guide a drill for forming a hole for receiving a dental implant, the sleeve further configured to determine a defined orientation of the implant when the implant is installed in the jawbone of the patient, wherein the sleeve is adhesively bonded to the template (col. 4, lines 7-9). With respect to claim 25, the sleeve is adhesively bonded to the template via dental cement (cementitious composition 28).

***Claim Rejections - 35 USC § 103***

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:
- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
13. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Poirier.
14. Poirier discloses the device as previously described above, but fails to show the working model is made of plaster.
15. It would have been obvious to one having ordinary skill in the art at the time of invention to select plaster for the working model, since it has been held to be within the

general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

### ***Response to Arguments***

16. Applicant's arguments with respect to claims 18-36 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

17. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew M. Nelson whose telephone number is (571)

270-5898. The examiner can normally be reached on Monday-Friday 7:30am-5:00pm EDT.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez can be reached on (571) 272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/MMN/

/Cris L. Rodriguez/  
Supervisory Patent Examiner, Art Unit 3732